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13 COMPANY, THE TCW GROUP,  
14 INC., AND TRUST COMPANY OF  
15 THE WEST

16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA**

18 EIG GLOBAL ENERGY PARTNERS,  
19 LLC, a Delaware limited liability  
20 company,

21 Plaintiff,

22 v.

23 TCW ASSET MANAGEMENT  
24 COMPANY, a California corporation,  
25 THE TCW GROUP, INC., a Nevada  
26 corporation, and TRUST COMPANY  
27 OF THE WEST, a California  
28 corporation,

Defendants.

CASE NO.: CV12-07173 CAS (MANx)

**DEFENDANTS' OBJECTIONS TO  
PLAINTIFF'S [PROPOSED]  
PRELIMINARY INJUNCTION  
ORDER**

Hearing Date: November 5, 2012

Time: 10:00 a.m.

Courtroom: 5

Judge: Hon. Christina A. Snyder

Complaint Filed: August 21, 2012

Pending EIG's submission of a new proposed order, defendants The TCW Group, Inc. ("TCW"), TCW Asset Management Company ("TAMCO") and Trust Company of the West ("TCXW") (collectively, "TCW" or "Defendants") hereby submit the following objections to Plaintiff's [Proposed] Preliminary Injunction Order ("EIG's Proposed Order"), which EIG previously lodged along with its motion. (ECF No. 5-1.) In the event EIG submits a new proposed order, TCW reserves its rights to object to that order. And, if the Court determines to grant preliminary injunctive relief, TCW respectfully requests an opportunity to submit its own proposed form of order and to be heard on the appropriate scope of any injunction and the bond appropriate to that injunction.

**I. INJUNCTION ORIGINALLY PROPOSED BY EIG**

"Defendants, and all of their parents, subsidiaries, officers, agents, servants, employees, and attorneys, and all persons in active concert or participation or in privity with any of them who receive actual notice of the order by personal service or otherwise, ARE HEREBY PRELIMINARILY RESTRAINED AND ENJOINED from taking any steps to consummate any transaction resulting in a change in control of TAMCO (including but not limited to the pending Carlyle Group acquisition of a majority of TCW Group stock). The conduct prohibited includes, but is not limited to, (a) participating in a transaction closing or taking any steps whose immediate effect would be to consummate or close the transaction; (b) recording a change in ownership of stock or a TCW Entity on any books or records with respect to such a transaction; (c) seeking or obtaining consents of any kind to effectuate the transaction, other than consent of the Board of Directors of 'TCW-EIG Alternative Investments, LLC' established through the Limited Liability Company Agreement dated as of October 16, 2009 (the 'EIG-TCW JV'); (d) providing any notices or acknowledgements of any purported or prospective transfer of any TAMCO membership or economic interests in EIG-TCW JV with respect to such transaction,

(e) sharing confidential EIG-TCW JV information with Carlyle Group (or other proposed acquirers), or (f) appointing as officers, directors, employees, or representatives of the TCW Entities, or any of them, any personnel employed by Carlyle Group (or other acquirer).” (ECF No. 5-1, ¶ 2 at 1:5-24.)

“Within fourteen days of the date the Court enters this Preliminary Injunction, Defendants shall file and serve a report in writing and under oath setting forth in detail the manner and form with which Defendants have complied, and will continue to comply, with the Preliminary Injunction.”

## **II. SPECIFIC OBJECTIONS AS TO FORM OF EIG'S PROPOSED INJUNCTION**

EIG’s Proposed Order is impermissibly overbroad and is not appropriately tailored to address the purported harm alleged in its motion, namely, the alleged transfer by TAMCO of its Membership Interest in the LLC without the consent of the Board of the LLC. See Califano, 442 U.S. at 702-03; Stormans, 586 F.3d at 1142; Ocean Spray Cranberries, Inc. v. PepsiCo, Inc., 160 F.3d 58, 63-64 (1st Cir. 1998). The order would do far more than prevent TCW from consummating this transfer; it would prevent the consummation of the Carlyle Transaction even if it could be structured to avoid any transfer of TAMCO’s Membership Interest.

In Paragraph 2 of the Proposed Preliminary Injunction Order, EIG requests that the Court enjoin Defendants as well as non-parties to the litigation from “taking any steps” to “consummate any transaction resulting in a change in control of TAMCO (including but not limited to the pending Carlyle Group acquisition of a majority of TCW Group Stock.) (emphasis added) As shown above, that relief is overly broad because it is possible to fashion a much narrower injunction that effectively would prevent TAMCO from transferring its Membership Interest to Carlyle even after the Carlyle Transaction closes. See Roche, 646 F.3d at 425-26; Eurika, 899 A.2d at 115-16. EIG’s proposed order, also by its terms, applies to nonparties, which is inappropriate.

1 As to subparts (a)-(d), the proposed order is entirely outside the scope of the  
2 relief necessary to preserve the status quo during the pendency of the arbitration.  
3 Further, taking steps towards the closing of the Carlyle Transaction causes no harm  
4 to EIG, while the inability to take such steps would cause great harm to TCW and the  
5 parties to the Carlyle Transaction. The parties have been, and will need to continue  
6 to, work towards an orderly closing of the transaction. These efforts involve the  
7 work of a significant number of employees and advisors of TCW and Carlyle, as  
8 well as an equally significant number of third parties, including clients. If the parties  
9 were prevented from continuing to take the necessary steps to be ready to close the  
10 Carlyle Transaction in a timely manner (subject to the terms of the injunction), it is  
11 likely that the transaction would terminate due to inability of the parties to take the  
12 necessary steps to ensure the financing sources are ready and able to fund the  
13 transaction (and the resulting expiration of the necessary financing commitments)  
14 and the inability of the parties to communicate with third parties (including TCW  
15 clients).

16 For example, consents from hundreds of TCW clients are being sought in  
17 connection with the transaction, including the consent of the shareholders of the  
18 TCW and MetWest mutual funds via a public proxy process, a very time-consuming  
19 process that requires the continuous efforts of all parties and their advisors. Any  
20 disruption to this process, or any other pre-closing efforts, would have a chilling  
21 effect on the ability of the parties to close the Carlyle Transaction. This will be the  
22 case even if TCW is successful in the arbitration in light of EIG's own admission  
23 that it expects the arbitration to continue well into mid-2013. Indeed, the sole  
24 irreparable injury identified by the Court in its tentative, the transfer of TAMCO's  
25 Membership Interest in the LLC without the consent of the LLC board, is fully  
26 addressed by an order that is limited to prohibiting that transfer. Nothing else is  
27 necessary or appropriate to preserve the status quo. Steps leading to that ultimate  
28

1 transfer cause no irreparable injury to EIG and their inclusion in EIG's proposed  
2 order violates the Supreme Court's admonition.

3 As to (e) and (f), the Court rejected claims based on the mere fear of future  
4 leaks of EIG's confidential information and future interference with EIG's business  
5 decisions. Since no Carlyle designees can be appointed to the boards of the TCW  
6 entities until the "transfer" occurs, an injunction limited to such a transfer is more  
7 than sufficient. (ECF No. 5-1, ¶ 2 at 1:9-11.)

8 Finally, Paragraph 5 of EIG's Proposed Preliminary Injunction Order is  
9 equally overbroad and is also overly burdensome, redundant and premised on  
10 an improper assumption that Defendants will disregard any preliminary injunction  
11 order this Court may enter. In essence, EIG asks the Court to order Defendants to  
12 comply with any injunction entered by the Court and to swear to their compliance in  
13 a report detailing the manner in which they have complied. This is absurd. EIG has  
14 made no showing, and there is no basis to believe, that Defendants would disregard a  
15 preliminary injunction order issued by the Court.

16 As courts have repeatedly recognized, it is presumed that litigants will comply  
17 with – not violate – the orders of the Court. See Kaisa v. Chang, 396 F. Supp. 375,  
18 378 (D. Haw. 1975) (declining to require notice to absent class members of its order  
19 for injunctive and declaratory relief because "there is no reason to assume that  
20 defendants will not comply with the court's order"); Human Res. Research & Mgmt.  
21 Grp., Inc. v. Cnty. of Suffolk, 687 F. Supp. 2d 237, 268 (E.D.N.Y. 2010) (where  
22 court granted summary judgment enjoining enforcement of certain challenged  
23 statutory provisions, declining to order any further injunction because "'the Court  
24 allows the defendant a good faith presumption of compliance with the spirit and  
25 letter' of the Court's ruling" (quoting Ladd v. Thomas, 14 F. Supp. 2d 222, 224-25  
26 (D. Conn. 1998)).

1 **III. LEGAL ANALYSIS IN SUPPORT OF GENERAL AND SPECIFIC**  
 2 **OBJECTIONS TO FORM OF ORDER**

3 Injunctive relief must be narrowly tailored to remedy the specific harm alleged.  
 4 Califano v. Yamasaki, 442 U.S. 682, 702, 99 S. Ct. 2545, 2558 (1979) (instructing  
 5 that “injunctive relief should be no more burdensome to the defendants than  
 6 necessary to provide complete relief to plaintiffs”); Stormans, Inc. v. Selecky, 586  
 7 F.3d 1109, 1142 (9th Cir. 2009) (reversing the district court’s order of preliminary  
 8 injunction as overbroad); United States Cellular Investment Company of Los  
 9 Angeles, Inc. v. GTE Mobilnet, Inc., 281 F.3d 929, 939-40 (9th Cir. 2002)  
 10 (upholding Judge Tevrizian’s order denying preliminary injunction on indirect  
 11 transfer of interest by parent of general partner as not violating restriction in  
 12 partnership agreement prohibiting transfers of partnership interests without the  
 13 consent of the other partners).

14 EIG’s Proposed Order goes far beyond what would be needed to adequately  
 15 preserve the status quo pending issuance of a final award in the arbitration by  
 16 needlessly enjoining a transaction with a value of almost \$1 billion. For example,  
 17 EIG’s Proposed Order not only would enjoin the transfer of TAMCO’s Membership  
 18 Interest in the general partner (the “LLC”) of Fund XV, a fund with approximately  
 19 \$4 billion of assets under management, it also would enjoin the Carlyle Transaction,  
 20 a transaction with a value of value of hundreds of millions of dollars involving a  
 21 global asset management firm with over \$125 billion in assets under management.  
 22 Consequently, as drafted, EIG’s Proposed Order would preclude the transfer of  
 23 ownership of a separate stand-alone investment management business with assets  
 24 under management *25 times* the size of assets under management in Fund XV.  
 25 EIG’s Proposed Order would prevent consummation of this transaction regardless of  
 26 whether it is structured to avoid a transfer of TAMCO’s Membership Interest in the  
 27 general partner of Fund XV.

1           EIG's Proposed Order also would preclude TCW or its parent, Société  
2 Générale, from "taking any steps," including the solicitation of client consents, that  
3 would enable Société Générale to close the sale of its interest in TCW in the event  
4 EIG loses the arbitration. This impact would be particularly draconian because by  
5 foreclosing TCW and Société Générale from taking even preparatory steps, the  
6 injunction could be the death knell of the transaction in that, for example, by the time  
7 the arbitration is finally resolved, the parties to the transaction would lack sufficient  
8 time to satisfy all of the conditions precedent for closing before the applicable  
9 deadlines for doing so have expired and would be unable to maintain the committed  
10 financing now in place.

11           In this way, the vast scope of EIG's Proposed Order is inconsistent with the  
12 Supreme Court's mandate that injunctive relief be narrowly tailored. The order also  
13 goes well beyond the view expressed by the Court at the hearing that any injunction,  
14 if warranted, should do no more than preserve the status quo during the pendency of  
15 the arbitration. Here, the only irreparable harm identified at oral argument was the  
16 transfer of TAMCO's Membership Interest in the LLC without EIG's consent. It is  
17 entirely unnecessary, however, to enjoin the Carlyle Transaction, much less  
18 preparatory steps toward closing the transaction, in order to temporarily enjoin the  
19 transfer of TAMCO's Membership Interest in the LLC. Indeed, the Court could, for  
20 example, fashion adequate relief that prevents any actual transfer of the interest by  
21 TAMCO by precluding TAMCO from transferring to Carlyle the benefits it enjoys  
22 as the holder of its interest - - *e.g.*, the information, voting and economic rights  
23 appurtenant to the interest - - pending final resolution of the arbitration, the only fund  
24 covered by the LLC Agreement.

25           TCW respectfully submits that any interim injunctive relief ordered by the  
26 Court should be narrowly tailored to the alleged transfer of a Membership Interest  
27 without EIG's consent. Such relief would be adequate to preserve the arbitrator's  
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ability to award EIG an effective remedy should he find a violation of the transfer provision in Section 5.1 of the LLC Agreement. See, e.g., Roche Diagnostics Corp. v. Med. Automation Sys., 646 F.3d 424, 425-26 (7th Cir. 2011) (allowing transaction to proceed pending arbitrator's ruling on Right of First Refusal stating, "[w]e conclude that the sale can proceed if MAS and Alerc respect Roche's exclusive rights, and if the parties ensure MAS is maintained as a separate firm . . . "); Eureka VIII LLC v. Niagara Falls Holding LLC, 899 A.2d 95, 115-116 (Del. Ch. 2006) ("after finding material breaches in transfer restrictions contained in LLC agreement, Vice Chancellor Strine allows breaching partner to retain its economic rights with respect to profits and distributions but as passive member with no management rights").

Dated: November 7, 2012

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By: /s/ Eric S. Waxman

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